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OFFICE OF PETITIONS

**JONES DAY
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NEW YORK NY 10017**

In re Patent No. 7,404,489	:	
Issue Date: July 29, 2008	:	
Application No. 10/814,399	:	ON PETITION
Filed: March 31, 2004	:	
Attorney Docket No. 12399-002-999	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 17, 2009, to revive the above-identified application.

The petition is **DISMISSED** as moot.

In reply to the Notice of Allowance and Issue Fee(s) Due mailed May 8, 2008, the issue fee was duly paid on June 19, 2008.

On July 29, 2008, U.S. Patent No. 7,404,489 issued on the instant application.

The instant petition was filed February 17, 2009.

Petitioner states that the above-identified application may have become abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational international treaty that requires publication of applications eighteen months after filing. Accordingly, petitioner requests that, if the USPTO deems it necessary, the patentee's failure to timely file a Rescission of Previous Nonpublication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii)) be corrected and the Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f)) be retroactively accepted should the USPTO deem it necessary. Petitioner states that PCT/US2006/024685 is not a counterpart application to the above-noted application.

As set forth in MPEP 1305:

Once the patent has been granted, the U.S. Patent and Trademark Office can take no action concerning it, except as provided in 35 U.S.C. 135, 35 U.S.C. 251 through 256, 35 U.S.C. 302 through 307 and 35 U.S.C. 311 through 316.

Accordingly, once the patent is granted, the Office has no jurisdiction over the patent. Also, see *Aristocrat Technologies Australia v. International Game Technologies* 2008 U.S. App. LEXIS 20060 (Fed. Cir. 2008) "[p]rocedural lapses during examination, should they occur, do not provide grounds of invalidity. Absent proof of inequitable conduct, the examiner's or the applicant's absolute compliance with the internal rules of patent examination becomes irrelevant after the patent has issued." The case was decided September 22, 2008.

The petition fee of \$810, submitted on February 17, 2009, is being credited to petitioner's deposit account as authorized.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
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 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
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The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Alicia Kelley at 571-272-6059.


David Bucci
Petitions Examiner
Office of Petitions